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John M.  
~~John M.~~ Kyle III  
Barnes and Thornburg  
1313 Merchants Bank Building  
Indianapolis, Indiana 46204

Re: Gary Development Landfill  
Gary, Indiana

Dear Mr. Kyle:

Thank you for your letter of October 7, 1983, requesting the removal of Gary Development Landfill from the Federal hazardous waste management system. Based upon the information you have supplied, plus other information available to this office, the facility is required to have a Resource Conservation and Recovery Act (RCRA) permit, and may not be withdrawn from the hazardous waste system.

Your request is based upon the quantity of hazardous wastes disposed of at the landfill. RCRA regulations do not provide for waivers of closure or post-closure requirements based upon the quantity of wastes handled. Furthermore, we have learned that your statements concerning the wastes that Gary Development has accepted from American Chemical Service, Inc. are inaccurate in several respects. A recent inspection of American Chemical Service revealed that 33 shipments of hazardous waste, labelled F005, were sent by manifest to Gary Development in 1981. Each shipment was approximately 2750 gallons. In addition, we were informed that a number of shipments of the same material were erroneously sent without manifests from November 10, 1980, until early 1981. This contradicts your statement that only four to six loads were received from American Chemical Service.

The hazardous waste number F005 represents certain non-halogenated solvents which are listed as hazardous wastes for the properties of ignitability and toxicity. Our understanding of the process which generates the wastes leads us to believe that any of the hazardous waste types handled by American Chemical Service might be present in the wastes sent to Gary Development. This includes hazardous waste numbers F001, F002, F005, H147, H031, H112, H002, P154, D001 and F003. The first three wastes in this list are hazardous because of their toxicity. American Chemical Service also handles paint waste, which may be hazardous due to heavy metal toxicity. Therefore, we find your assertion that American Chemical Service waste is only ignitable to be invalid.

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Finally, we discovered that the American Chemical Service wastes were not mixed with sand to eliminate ignitability, as your January 24, 1983, letter to George Garland states. The co-mixing of sand and wastes did not begin until late 1981 or early 1982.

With respect to your question concerning the applicability of 40 CFR Parts 264 and 265 to the activities performed by Gary Development Landfill, please find enclosed a copy of the November 22, 1983, Federal Register. This amendment clarifies the applicability of the hazardous waste regulations to existing facilities which fail to qualify for interim status, such as Gary Development. On page 52719, it is stated that "EPA has both the statutory and regulatory authority to apply either the Part 264 general permitting standards or the Part 265 interim status standards to existing facilities which have failed to qualify for interim status." The document sets forth an amendment to 40 CFR 265.1 which establishes that Part 265 is the appropriate set of standards applicable to facilities such as Gary Development Landfill, until a permit is issued. Since the State of Indiana has received Phase I interim authorization, the Indiana State Board of Health (ISBH) is responsible for administering the interim status standards in lieu of the Federal government. Indiana has clarified the applicability issue by deleting 265.1(b) in their adoption of Part 265, and inserting language which makes the standards applicable to all hazardous waste facilities regardless of permit status.

Factors which ISBH may consider in approving any closure and post-closure plans submitted by the landfill do include the quantity, types of waste, and methods of management. Because of the landfill's repeated ratings of "unacceptable operation" in State inspections, its location in the Grand Calumet River floodplain, and the actual quantity and nature of American Chemical Service waste disposed of there, we believe that proper closure will involve a design with numerous protective measures.

We have considered the above factors, plus the Agreed Order reached between the Environmental Management Board and Gary Development in early 1983, and have concluded that it is not in the public interest for Gary Development Landfill to be issued an Interim Status Compliance Letter for continued hazardous waste operation. Since the Landfill does not have interim status or a permit, closure and post-closure are required.

In summary, (1) Gary Development Landfill is in violation of RCRA Section 3005, plus 40 CFR 265.2(c), 270.10(a) and 124.3(a), for disposal of hazardous wastes without a permit; (2) the landfill is subject to regulation under 320 Indiana Administrative Code, Article 4; and (3) the landfill must undergo closure pursuant to these regulations to avoid enforcement action by this office.

violations

Please contact Mr. Richard Shandross, at (312) 886-0986, if you have any questions about this matter.

Sincerely yours,

Karl J. Klapitsch, Jr., Chief  
Waste Management Branch

Enclosure

cc: Guinn Doyle, ISBH  
~~Jim Traylor~~, ISBH *GET 2/13*  
Gary Development Landfill